ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

COMMENTS OF BELL ATLANTIC

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SUMMARY

The Joint Board's recommended decision to implement the Universal Service provisions of the 1996 Act, with the changes that Bell Atlantic suggests, represents a solid foundation for maintaining universal service and for providing reasonably-priced telecommunications to schools, libraries, and rural health care providers. Some of the Board's proposals, however, require significant revision in order to be consistent with the statute and with the Joint Board's own recommended principles.

For example, contrary to the Joint Board's recommendation, the Commission has no authority under either the 1996 Act or the pre-existing provisions of the 1934 Act to levy universal service contributions on intrastate revenues. The 1996 Act specifies one or more interstate universal service funds, subject to Commission jurisdiction, financed by interstate service revenues, and separate intrastate funds, subject to exclusive state jurisdiction, and financed by intrastate service revenues. And the 1934 Act prohibits the Commission from regulating intrastate services. The Board's proposal also fails as a matter of its own policy. It is not competitively neutral, because it would make it difficult for states to maintain their own fund, and because it would force some customers to pay higher intrastate rates simply to export revenues to other states without receiving any benefit in return.

Instead of the Board's proposal to levy federal universal service contributions on gross revenues, less payments to other carriers, the Commission should assess contributions on carriers' interstate retail revenues. As Dr. Robert W. Crandall shows in the attached affidavit,

such a levy would have the same effect on end users as the Board's recommendation, but it would be easier to administer and more competitively-neutral.

The Commission must confirm that all carriers have the right to recover their universal service contributions from all applicable customers. If the Commission adopts the Joint Board's recommendation to assess gross revenues, less transfer payments, this recovery should take the form of exogenous price cap adjustments, additional charges to customers of unbundled network elements, and the right to identify universal service contributions on end user bills. Failure to allow carriers to recover contributions from their wholesale customers would violate the statutory requirement that all carriers contribute to the fund. It would also violate the principle of competitive neutrality, because the bulk of the burden would be placed on facilities-based carriers. If the Commission assesses contributions only on interstate retail revenues, as it should, it need only confirm that carriers may identify such charges on end user bills.

In determining high cost areas, the Commission should use state-wide averaged actual carrier costs, not proxy models. If it uses proxy models, however, those models may lawfully be based upon geographical service areas adopted by each state, not on a nationwide standard. In addition, the Commission should determine in this proceeding that any proxy model that is adopted to evaluate the relative costs of local exchange carriers ("LECs") will not be used in ratemaking, such as in calculating access charges. Prescribed charges must be based upon the actual costs that a particular carrier incurs, not on a theoretical nationwide model.

The calculation of benchmark revenues should use the same mix of services and facilities as may receive high cost support. For example, the Joint Board recommends that high-cost support be technologically neutral -- it may be paid to wireline and wireless carriers.

Revenue benchmark determinations should likewise be based on the revenues from both wireline and wireless technologies.

The Joint Board was properly concerned that subscribership among low-income consumers should be maintained or increased. Local programs should be left to the states which have jurisdiction over local services and can best determine what program or programs have the best chance of succeeding locally. If the Commission nonetheless attempts to prohibit denial of local service for nonpayment of toll charges, despite a lack of jurisdiction, it should require the affected customers to accept free toll blocking service until their outstanding toll balances are repaid.

Rural health care support should be limited to supporting the rate differential between telecommunications services offered in urban and rural areas, as the Joint Board recommends and the 1996 Act specifies. It should not be used to subsidize modernizing and upgrading local network facilities or to support new facility construction.

The Commission should adopt the Board's proposals to support telecommunications services for schools and libraries. However, under the statute, universal service support may be paid only to telecommunications carriers. Therefore, the Commission may not lawfully provide funding to providers of inside wiring and Internet access services that are not also telecommunications carriers.

Finally, the Commission should address revisions to the subscriber line charge ("SLC") and carrier common line ("CCL") charges in its access charge reform proceeding, rather than here. If it addresses the Joint Board's recommendations on SLC and CCL in this proceeding, however, it should not reduce the SLC to reflect removal of long-term support and

pay telephone costs from CCL, because those costs were never included in SLC revenue requirements, and their removal will have no effect on SLC costs.

In summary, the Commission should modify the Joint Board's recommendations by adopting changes that are needed to be consistent with the Act, Congressional intent, and the Joint Board's proposed principles.

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To: The Commission

COMMENTS OF BELL ATLANTIC[1]

I. Introduction

Section 254 of the Telecommunications Act of 1996 ("1996 Act") requires the Commission, upon recommendation of a federal-state Joint Board, to adopt new regulations for financing universal service to high-cost areas, for low-income subscribers, for schools and libraries, and for rural health care providers.[2] Some provisions of the Joint Board's comprehensive recommendation to implement Section 254[3] are consistent with the statute and public policy and should be adopted. Other provisions, however, require substantial revision in

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[1] The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; and Bell Atlantic-West Virginia, Inc.

[2] 47 U.S.C. § 254.

[3] ***Recommended Decision***, FCC 96J-3 (rel. Nov. 8, 1996) ("RD").

order to be consistent with the 1996 Act, with the pre-existing provisions of the Communications Act of 1934 ("1934 Act"), and with the Joint Board's own recommended principles. With the revisions described below, Joint Board's proposal will help maintain universal access to telecommunications service for all Americans.

II. Telephone Service Today Is Affordable, and Total High-Cost Support Should Not Be Higher Than the Current Level.

The Commission should affirm the Joint Board's finding that "local rates [are] generally affordable throughout the nation based on subscribership levels."[4] Overall subscribership is high and has remained at high levels for a number of years. As the Senate Commerce Committee found, the 1996 Act neither requires nor contemplates that the Commission will adopt a program that requires the level of high-cost universal service support to become more expensive and burdensome to unsubsidized ratepayers than it is today.[5] The Commission should confirm that current high-cost funding levels are sufficient to preserve universal service and meet statutory requirements.[6] The Commission's focus, therefore should not be on changing the size of the high-cost fund, but on providing for a predictable, explicit, and

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[4] ***Id.*** at ¶ 133.

[5] Sen. Rep. No. 104-23, 104th Cong., 1st Sess. 25-26 (1995) ("the Committee expects that the preservation and advancement of universal service, including the evolving definition of universal service, can be accomplished without any increase in the overall nationwide level of universal service support...").

[6] Federal and state low-income support should help reduce pockets of low subscribership that are caused by income levels rather than by unusually high costs.

competitively neutral way of financing the federal high-cost universal service fund at existing levels.[7]

III. The Recommended Contribution Formula Exceeds the Commission's Statutory Authority and Is Not Competitively Neutral.

In addition to the six universal service principles specified in the 1996 Act,[8] the Joint Board appropriately recommended that the Commission base its universal service policies on the principle of competitive neutrality.[9] The Board found that "competitively neutral collection and distribution of funds and determination of eligibility in the universal service support mechanism is consistent with congressional intent 'to provide for a pro-competitive, de-regulatory national policy framework.'"[10] Yet the recommended formula for financing universal service not only violates this cardinal principle, it also violates the Act itself. Instead of basing universal service contributions on the gross interstate and intrastate revenues, less payments to other carriers, of all providers of interstate telecommunications services, the Commission should base such contributions on retail interstate telecommunications revenues.

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[7] To help maintain the high-cost fund at current levels, the Commission should find that eligible carriers that use their own facilities for only a portion of their service may be supported on a ***pro rata*** basis only to the extent that they use their own facilities, and not for the services and network elements that they obtain from others.

[8] ***See*** 47 U.S.C. § 254(b), RD at ¶ 13.

[9] RD at ¶ 23.

[10] ***Id.*** (footnote omitted).

The majority of the Joint Board recommended that the Commission assess federal education and rural health care universal service contributions on all of the interstate and intrastate revenues of providers of any interstate service (less payment to other carriers, discussed below), exempting only carriers that offer only intrastate services.[11] This result, however, would be unlawful, as two of the Joint Board members pointed out.[12]

From the date of enactment of the 1934 Act, Congress has given jurisdiction to regulate intrastate services exclusively to the states, while interstate services have been under Commission authority.[13] In enacting the 1996 Act, Congress made clear that it intended to preserve existing statutory provisions in all cases except where it expressly provided otherwise.[14] In limited areas, not applicable here, Congress gave the Commission express authority over certain intrastate services.[15] In all other areas, however, it preserved the states' historical jurisdictional authority over intrastate services. And, in Section 253(b), it expressly preserved state authority to maintain universal service, authority which would be undermined if the Commission were to assess intrastate revenues for the federal fund.[16]

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[11] ***Id.*** at ¶ 817. The Board came to no conclusion regarding the funding base for low-income and high-cost support. ***Id.*** at ¶ 822.

[12] ***Id.***, Separate Statement of Commissioner Kenneth McClure, Concurring in Part and Dissenting in Part, Separate Statement of Commissioner Laska Schoenfelder, Dissenting in Part.

[13] 47 U.S.C. § 152.

[14] PL 104-104, § 601(c)(1).

[15] For example, under Section 251(e), the Commission is assigned "exclusive jurisdiction" over numbering administration. Similarly, Section 276(b)(1)(A) expressly assigns the Commission authority over compensation rates for use of payphones for both "interstate and intrastate call[s]."

[16] ***See*** 47 U.S.C. § 253(b).

Section 254, rather than modifying states' authority, preserves it and prohibits the Commission from financing interstate universal service through levies on intrastate services. That section establishes two separate types of universal service funds -- federal and state. Interstate universal service subsidies, which are subject to exclusive Commission authority, are to be financed by contributions from all providers of interstate telecommunications services[17] while states that choose to establish their own intrastate universal service funds must finance them through contributions from providers of intrastate telecommunications services.[18] To the extent that a provider offers both interstate and intrastate services, it follows that the Commission has authority to assess only interstate revenues and the states authority to tap only intrastate revenues. Nothing in the Act gives either the Commission or the states authority to assess contributions based upon the other's funding sources.[19] If Congress had intended that both the Commission and states could tap both interstate and intrastate revenues, as the Joint Board suggests,[20] there would have been no reason for it to specify separate universal service funds and funding sources.

Even if these provisions were ambiguous, which they are not, one need only look to Section 2(b), the jurisdiction section of the 1934 Act, which was fully preserved by the 1996 Act.[21] Section 2(b) expressly prevents the Commission from exercising jurisdiction over

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[17] 47 U.S.C. § 254(d).

[18] 47 U.S.C. § 254(f).

[19] ***See*** RD at ¶ 822.

[20] ***Id.***

[21] 47 U.S.C. § 152(b). ***See, also*** 47 U.S.C. § 253(b).

"charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication services."[22] Levying a fee on intrastate communications revenues, which the affected carriers would pass through in rates to their customers, would constitute an unlawful attempt to regulate the provision of such services.[23]

The Joint Board's proposal also fails on policy grounds. First, as Dr. Robert W. Crandall demonstrates,[24] it violates the Board's own principle of competitive neutrality. Telecommunications providers that offer only intrastate services would have no interstate universal service obligations, but a competitor that offers even one interstate service would be subject to assessment on all of its intrastate revenues (less payments to other carriers).[25] Such a result would give the intrastate-only carrier a distinct competitive advantage and discriminate against an intrastate carrier that also happens to provide an interstate service.[26]

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[22] 47 U.S.C. § 152(b).

[23] ***See Iowa Utilities Board v. FCC, Order Granting Stay Pending Judicial Review***, Nos. 96-3321, slip op. at 15 (8th Cir. Oct. 15, 1996) ("In ***Louisiana*** [***Louisiana Pub. Serv. Comm'n v. FCC,*** 476 U.S. 355 (1986)] the Supreme Court determined that in order to overcome subsection 2(b)'s limits on the FCC's jurisdiction with respect to intrastate communications service, Congress must 'unambiguously' or 'straightforwardly' either modify subsection 2(b) or grant the FCC additional authority."). No such modification or grant appears in the applicable provisions of the 1996 Act.

[24] Declaration of Robert W. Crandall at ¶ 10 ("Crandall Decl.").

[25] Any assessment, of course, should exclude non-telecommunications revenues, such as revenues derived from printed directories.

[26] Carriers could avoid being assessed for the federal fund by rearranging their networks, or establishing separate carriers, even though such actions result in inefficient operations, loss of economies of scale and scope, and customer inconvenience.

Second, if the Commission were to assess interstate universal service contributions on intrastate revenues, states would be forced to levy support from the same revenues for their intrastate universal service fund. This would mean that local services would be taxed twice, once to export revenues to other states and once to subsidize high-cost areas in their own state. This double-whammy on intrastate revenues would likely cause sharp local rate increases to pay disproportionately for both universal service funds. In an effort to mitigate local rate increases, states might need to curtail their own successful universal service programs.

Third, intrastate ratepayers derive no benefit from sending a portion of their payments to subsidize service in other states. Interstate customers arguably have an interest in maintaining affordable telephone service throughout the country, because high subscribership gives them more people to call and makes their interstate service more valuable. Ratepayers of intrastate services benefit from maintaining high subscribership only within their own state. Therefore, their intrastate payment should not be used to export money to other jurisdictions.

Finally, the Board recommends that the Commission should assess universal service fund contributions from all telecommunications providers based upon the definition it used for interstate Telecommunications Relay Service ("TRS").[27] Contributions for the interstate TRS fund are based only upon those carriers' interstate revenues, while the states determine the method of covering the intrastate portion of the TRS programs, such as by assessing carriers' intrastate revenues or imposing a charge directly on end users.[28] The Commission should likewise base federal universal service funding only on those carriers' interstate revenues.

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[27] RD at ¶¶ 784-86.

[28] ***See*** 47 C.F.R. § 64.604 (c)(4)(iii)(A).

IV. Carriers Must Be Permitted To Charge Customers for Universal Service Fund Contributions.

The Joint Board makes no explicit finding on whether carriers may pass all of their universal service fund contributions through to their customers. It does find, however, "that carriers are permitted under Section 254 to pass through to users of unbundled network elements an equitable and nondiscriminatory portion of their universal service obligation."[29] In addition, as Commission Chong pointed out in her separate statement, "*[l]et us make no mistake about who will foot the bill for this universal service program. It is not the telecommunications carriers, but the users of telecommunications services to whom these costs will be passed through in a competitive marketplace.*"[30]

As shown below, the Commission should assess interstate universal service fund contributions solely on interstate retail revenues, rather than gross revenues less payments to other carriers. If the Commission were to base contributions only on the carriers' interstate retail revenues, as it should, it should allow carriers to include interstate universal service payments in their interstate end user rates, and to identify those payments on their bills for those services. If it were to adopt the Joint Board's recommendation and assess interstate and intrastate gross revenues (less transfer payments), however, it must permit carriers to pass such charges through to all their customers, wholesale as well as retail. Unless facilities-based carriers are able to pass

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[29] RD at ¶ 808.

[30] ***Id.***, Separate Statement of FCC Commissioner Rachelle B. Chong, Concurring in Part, Dissenting in Part at G-13 (emphasis in the original).

their universal service contributions through to their wholesale customers -- both resellers and purchasers of unbundled network elements to the extent the revenues for those services are assessed for the federal fund -- those facilities-based carriers would be forced to bear the brunt of universal service funding. Rather than double-counting universal service fund contributions, which was the Joint Board's concern,[31] the LECs' wholesale customers would contribute very little. This result would not only be inequitable as a matter of policy, it would be unlawful, because the 1996 Act requires "all providers" of interstate services to make an "equitable and nondiscriminatory contribution" to universal service.[32]

Such a result would also stand Congressional policy on its head. Congress intended that much of the new local competition would come from entrants that make substantial use of their own facilities to offer a variety of innovative services to the public using advanced technologies.[33] The Joint Board's universal service financing proposal, however, would discourage entrants from building their own facilities and encourage them to rely exclusively on the incumbent LECs' unbundled network elements or resold services, thereby avoiding universal service funding obligations.

Accordingly, any requirement to assess federal universal service contributions on gross revenues, less payments to other carriers, should include a finding that, to the extent that the revenues from such elements are subject to assessment for the federal fund, incumbent LECs may charge purchasers of interstate unbundled elements and resellers a ***pro rata*** share of the cost

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[31] ***Id.*** at ¶ 807.

[32] 47 U.S.C. § 254(b)(4).

[33] H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 113 (1996) ("Conf. Rep.").

of funding universal service.[34] The Commission must also either give universal service payments exogenous treatment by allowing price cap LECs to increase their price cap indices by the full amount of interstate contributions, or allow a separately-identified universal service fund charge to access customers.[35]

The Commission should also allow all carriers to show on their customer bills the amount of the billed price that represents federal universal service payments.[36] Showing customers the amount of their universal service contributions will ensure that universal service support is explicit, as required by the 1996 Act.[37] In this way, customers also can realize that carriers are not arbitrarily raising their rates but are simply passing through universal service support obligations imposed by Congress.

V. Contributions Should Be Based on Retail Revenues.

A more practical approach to funding universal service, and one that avoids the concerns and complexities discussed above, would be to base contributions on carriers' interstate retail revenues -- the revenues received from end users for interstate services, including their

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[34] To the extent the Commission attempts to assess federal universal service contributions on intrastate revenues, it must also allow LECs to charge customers of intrastate unbundled network elements for those contributions.

[35] As discussed below, basing federal contributions on interstate retail revenues will avoid the need to pass the contributions through to customers of wholesale services.

[36] The Commission should encourage states to allow a similar showing of state contributions.

[37] 47 U.S.C. § 254(e). The legislative history makes abundantly clear that "all universal service support should be ***clearly identified***." Conf. Rep. at 131 (emphasis added).

subscriber line charges. The Joint Board's reasons for rejecting this approach do not hold up to analysis. The Board first finds that assessing universal service payments on retail revenues would "relieve" wholesale carriers from directly contributing to the support mechanisms.[38] As Dr. Crandall shows by numerical example, however, the impact on end users would be the same whether wholesale or retail revenues were being assessed, so long as the Commission does not unlawfully prevent carriers from passing through their contributions.[39] Given this ultimate impact, the Commission should levy universal charges on retail revenues in lieu of the administratively complex and burdensome Joint Board proposal. In addition, all, or nearly all, "wholesale" carriers provide substantial amounts of retail services and will therefore contribute significantly to the fund.

The Board's second reason for rejecting the retail revenues approach is that the Commission has not traditionally compiled records on a retail basis, so that tracking the contribution base will be more difficult.[40] The Commission does not, however, track gross revenues from non-dominant carriers, nor does it receive comprehensive reports of payments from one carrier to another. The only payments to other carriers the Commission currently tracks are interstate access charges paid to dominant carriers. Therefore, the infirmity that the Joint Board found in use of retail revenues also applies to its recommended approach. There is no valid justification for adopting the Joint Board's administratively complex approach when a simple levy on retail revenues will accomplish the same result.

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[38] RD at ¶ 811.

[39] Crandall Decl. at ¶¶ 6-8.

[40] RD at ¶ 811.

VI. Proxy Models Should Not Be Used To Determine Local Costs.

A. *Proxy Models Produce Artificial Cost Levels Which Will Differ from LECs' Actual Costs.*

The Joint Board recommended adoption of a forward-looking proxy model to calculate the costs on which to base high-cost support.[41] It found, however, that none of the models before it was sufficiently well-documented and justified to provide the basis for calculating support costs.[42] Accordingly, instead of recommending adoption of any single approach, the Board proposed a series of workshops to refine the existing models into a single consensus approach.[43]

If the Commission chooses to retain the proxy model concept, the workshop approach should be followed, and Bell Atlantic will contribute actively in the process. However, as Bell Atlantic showed in its comments to the Joint Board, it would be better policy for the Commission to use state-averaged actual line costs, not proxy cost models, as the basis for high-cost support payments[44] Use of actual costs will eliminate the need to find a valid proxy model -- there is no need to use a proxy when actual figures are available. The Joint Board itself even recommended use of actual loop costs, rather than a proxy, to determine whether schools and

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[41] ***Id.*** at ¶ 276.

[42] ***Id.*** at ¶ 279.

[43] ***Id.*** at ¶ 281.

[44] Comments of Bell Atlantic at 8-9 (filed Apr. 12, 1996) ("Bell Atlantic Comments").

libraries are in "high-cost areas" for calculating education support.[45] There is no reason not to use actual costs for calculating high cost support as well.

As Bell Atlantic demonstrated earlier, use of actual costs provides better data than can any theoretical proxy model, no matter how well-designed. Averaging the costs within each state will also eliminate the disincentives for efficiency that are built into the existing system, because LECs with obsolete technology or inefficient operations will not be rewarded with higher support payments than their more efficient neighbors.[46] Finally, Bell Atlantic's proposal will also ensure that the high-cost fund support flows to states that actually experience high costs, not just those that theoretically may experience such high costs.

B. *Proxy Models May Not Be Used for Ratemaking.*

If the Commission decides to use proxy cost models in lieu of actual costs, however, it must confine their use to this proceeding. Although proxy models may give the Commission a reasonable comparison of what the costs of various LECs ideally should be, actual cost-based rates must be based upon each affected carrier's actual service costs. Therefore, should the Commission depart from existing price cap rules in its forthcoming access charge reform proceeding, it must allow for recovery of actual costs. As Dr. Crandall points out, the Commission must recognize that incumbent LECs have a substantial embedded investment,

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[45] RD at ¶ 560.

[46] ***See*** Bell Atlantic Comments at 8-9, Reply Comments of Bell Atlantic at 2-3 (filed May 7, 1996).

incurred to meet regulatory obligations, that they must have the right to include in their rates.[47] Theoretical proxy cost models do not take these costs into account and, therefore, cannot be used for ratemaking.[48]

C. *The Commission Has No Authority To Define Service Areas for Calculating Costs*

The Joint Board erroneously found that the Commission can base high-cost support on a service area that differs from that established by the applicable state commission.[49] In addition, the proxy models the Board references base their cost calculation on a nationwide definition of LEC service areas.[50] The Act, however, gives states the exclusive authority to establish non-rural service areas "for the purpose of determining universal service obligations ***and support mechanisms***."[51] As a result, the Commission is without authority to establish service areas for this purpose. Instead, each state, not the Commission, has exclusive authority to determine the appropriate service area on which to base high-cost calculations in non-rural areas.

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[47] Crandall Decl. at ¶¶ 14-15.

[48] The only carriers that could potentially replicate the cost structure of a forward-looking proxy cost model are new entrants building networks from scratch. There is no legal or policy justification for the Commission to discriminate against incumbent carriers by prohibiting recovery of embedded plant that was built to meet their regulatory universal service obligations.

[49] RD at ¶ 178.

[50] ***Id.*** at ¶¶ 276-79. The two proxy models cited in the RD base cost calculations on census block groups.

[51] 47 U.S.C. § 214(e)(5) (emphasis added).

The Act is clear and unequivocal in this regard[52] and the Commission may not change it by regulation just because it disagrees with Congress.

VII. Revenue Benchmarks Should Be Based on All Applicable Technologies.

The Joint Board proposes to calculate a nationwide revenue benchmark for determining the level of high-cost support on the basis of the average revenues from local exchange and access services, including services that support the cost of the local loop.[53] This average per-line residential benchmark appears to be based upon the average revenue from wireline telephone services to all residences.[54] High-cost support payments, however, would be "technology neutral"[55] and available to any eligible carrier, whether that carrier uses wireline technology, wireless technology, or a combination, to deliver the supported services.[56]

These disparate provisions will produce a mismatch between the benchmark revenues and the actual services being supported. Although wireless services are eligible for support, wireless service revenues, which may differ markedly from wireline revenues, are not included in the benchmark revenues. In order to avoid the mismatch between the benchmark and

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[52] The Act gives the Commission and the states concurrent authority to define rural service areas, but leaves establishment of non-rural service areas exclusively to the states. ***Id.***

[53] RD at ¶¶ 309-11.

[54] The Board also recommends developing a separate benchmark revenue figure for single-line businesses. ***Id.*** at ¶ 312.

[55] ***Id.*** at ¶ 45.

[56] ***Id.*** at ¶ 155.

the actual revenues being supported, the Commission should modify the Board's recommendation to take into account the revenue from all technologies that may receive high-cost support, not just services that use wireline technology.

VIII. Affordability Determinations Should Be Left to the States.

The Joint Board appropriately found that affordability of telephone service is affected by factors besides rate levels, including local calling area, income levels, cost of living, and population density.[57] It recommends that the states should exercise principal responsibility for determining the affordability of rates[58] and that the Commission and any affected state should work together should subscribership within that state drop.[59]

The Commission should adopt the Joint Board's recommendation. States are in the best position to know whether local rates within their jurisdiction are affordable. Only if subscribership rates drop by a statistically significant amount over a period of time,[60] and the state asks for federal help, should the Commission offer to work with the state to determine and, if possible, remedy the problem.

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[57] ***Id.*** at ¶126.

[58] ***Id.*** at ¶ 131.

[59] ***Id.*** at ¶ 132.

[60] Quarter-by-quarter variations in subscribership and small annual fluctuations are not significant.

As the Joint Board found, however, telephone service is generally affordable today.[61] Therefore, any cooperative federal-state remedies would be needed only to deal with local aberrations, not a nationwide problem.

IX. The Commission Should Adopt Most Low-Income Support Proposals.

Federal Lifeline service funding would increase from $3.50 per line to $5.25-$7.00 per line under the Joint Board's proposal.[62] The Board also recommended several measures designed to increase or maintain subscribership levels among low-income consumers. These include requiring companies that provide toll restriction services to offer them to lifeline subscribers at no charge,[63] prohibiting deposits for reconnection of service for lifeline customers who voluntarily subscribe to free toll blocking service,[64] and prohibiting denial of lifeline customers' local service for non-payment of toll bills.[65]

Bell Atlantic agrees that low-income subscribers should have access to telecommunications services at reasonable and affordable rates and that federal Lifeline and

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[61] RD at ¶ 133.

[62] ***Id.*** at ¶ 419. Some of Bell Atlantic's jurisdictions have prescribed rates for low-income customers that are less than the proposed federal support level.

[63] ***Id.*** at ¶¶ 384-85. All of the Bell Atlantic telephone companies currently offer toll blocking services. Contrary to the Board's finding, however, no Bell Atlantic company currently provides a toll control service (i.e., a service that blocks toll calls after a customer has reached a certain dollar limit). ***See id.*** at n.1284.

[64] ***Id.*** at ¶¶ 389 and 429.

[65] ***Id.*** at ¶ 387.

Link-Up assistance should be available for that purpose. Bell Atlantic also urges the Commission to adopt the Joint Board's recommendation that eligibility be based upon participation in a state low-income welfare program.[66] As Bell Atlantic urged in comments in the Commission's subscribership docket, however, the specific mechanisms to maintain low-income subscribership should continue to be state-prescribed.[67] Most of the proposals affect local services, and, under the 1934 Act, states retain exclusive jurisdiction over the rates, terms, and conditions of intrastate service.[68] Accordingly, the Commission may not lawfully adopt mechanisms, such as prohibitions on deposits and on denial of local service for non-payment of toll bills, that affect provision of local service.[69] If the Commission recommends that states adopt such measures, however, it should suggest that lifeline customers who would otherwise be denied local service for non-payment of toll be required to take free toll blocking (where available) in return for maintaining local service.[70] Otherwise, with little incentive to pay off their past-due toll bills, customers could maintain their local service while continuing to accrue large uncollectible toll bills, getting themselves deeper into debt and adding to the carriers'

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[66] *Id.* at ¶ 425.

[67] ***Amendment of the Commission's Rules and Policies to Increase Subscribership and Usage of the Public Switched Network***, CC Docket No. 95-115, Comments of Bell Atlantic (filed Sept. 27, 1995) ("Bell Atlantic Subscribership Comments").

[68] 47 U.S.C. § 152(b). ***See*** Bell Atlantic Subscribership Comments at 8-12.

[69] Even if the Commission could assert jurisdiction to prevent denial of local service for non-payment of interstate toll services, without question the Commission has no authority to prohibit denial of local service for non-payment of intrastate toll.

[70] Any rule that the Commission itself adopts regarding denial of local service, despite its lack of jurisdiction, should contain this same condition.

uncollectibles.[71] Permitting such customers to maintain service only if they agree to accept free toll blocking would encourage them to pay off past-due toll bills in order to restore toll access. It is likely that, once they pay off their toll debts, they would try harder to control the amount of toll charges they incur.

X. Rural Health Care Support Should Not Be Extended Beyond Statutory Requirements.

The 1996 Act provides support for rural health care providers to ensure that their rates for telecommunications services are "reasonably comparable to rates charged for similar services in urban areas in that State."[72] The Joint Board appropriately recommended a formula under which rural rates would be measured against comparable commercial rates in the nearest city, with support available for the rate differential.[73] The Commission should follow the dictates of the statute and adopt the Joint Board's recommendation.

It is likely that some health care groups will ask the Commission to expand this proposal to subsidize network modernization in rural areas, to support provision of facilities to connect rural areas to databases dozens or hundreds of miles away, and to subsidize specially-constructed high-capacity facilities. Such proposals vastly exceed the limited provisions of the statute and would cause an unintended substantial increase in the support fund. Support should

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[71] Given the growing number of available interexchange carriers, customers could switch from one to another, or "dial-around" their presubscribed carrier, even if some carriers deny them service.

[72] 47 U.S.C. § 254(h)(1)(A).

[73] RD at ¶¶ 667-68.